

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE JOSEF FRIWAT,

Civil No. 11-CV-1631-H (RBB)

Debtor

Bankruptcy No. 08-6940-LT7
Adv. Proceeding No. 11-90142-LT

DAN JENKS,

llant

**ORDER AFFIRMING THE
DECISION OF THE
BANKRUPTCY JUDGE**

vs.

UNITED FAMILY, LLC; BP WEST COAST PRODUCTS LLP,

Appellees.

On July 23, 2011, plaintiff and appellant Dan Jenks (“Jenks”) filed an appeal from the July 13, 2011 order of the bankruptcy judge granting defendant BP West Coast Products LLC’s (“BP”) motion for judgment on the pleadings, granting defendant United Family LLC’s (“United”) motion to dismiss the complaint, and dismissing plaintiff’s complaint with prejudice as to all defendants. (Doc. No. 1.) On September 8, 2011, the Court issued a scheduling order in this case. (Doc. No. 5.) On September 23, 2011, the Court granted the parties’ joint motion for a continuance, and set the hearing on the appeal for November 7, 2011, at 10:30 a.m. On October 6, 2011, Jenks filed his opening brief. (Doc. No. 11.) On

1 October 19, 2011, BP filed its responsive brief. (Doc. No. 13.) On October 14, 2011, United
2 filed its responsive brief. (Doc. No. 14.) On October 27, 2011, Jenks filed his reply brief.
3 (Doc. No. 15.) The Court, pursuant to its discretion under the Local Civil Rule 7.1(d)(1),
4 determines this matter to be appropriate for resolution without oral argument, submits it on the
5 parties' papers, and vacates the hearing set for November 7, 2011. For the following reasons,
6 the Court affirms the order of the bankruptcy judge.

Statement of the Facts

8 Plaintiff and appellant Dan Jenks (“Jenks”) is the assignee of a judgment creditor of
9 Joseph Friwat, the debtor in this bankruptcy case. Jenks challenges the order in which the
10 United States Bankruptcy Court approved the sale of commercial real property owned by the
11 debtor pursuant to 11 U.S.C. § 363(f)(4). Jenks’ assignor, Joseph Fielding, obtained a money
12 judgment in the amount of \$1,329,000 against the debtor, which was reduced to an abstract of
13 judgment in July of 2008. (Doc. No. 2, Appeal Record (“AR”), part 1 at 106.) Josef Friwat
14 filed a chapter 7 petition in the San Diego bankruptcy court on July 27, 2008. In re Josef
15 Friwat, Case No. 08-06940-LT. (AR, part. 2 at 58.) On his bankruptcy schedules, Friwat
16 listed real property located at 3401 Long Beach Boulevard, Long Beach, California 90807.
17 (Id. at 58, 60.) On June 16, 2009, the bankruptcy court issued an order authorizing a sale of
18 estate property free and clear of all liens under 11 U.S.C. § 363. (AR, part 1 at 74-78.) That
19 order was not appealed. The property was sold to United Family, LLC as a bona-fide
20 purchaser. (AR, part 1 at 61.)

21 On November 8, 2010, Jenks filed a complaint in Los Angeles Superior Court to quiet
22 title to commercial real estate property located in Long Beach. (AR, part 1 at 2.) On
23 December 3, 2010, United Family, LLC removed the case to the United States Bankruptcy
24 Court for the Central District of California. (Id. at 70.) On March 9, 2011, the case was
25 transferred to the United States Bankruptcy Court for the Southern District of California. (AR,
26 part 2 at 107.) Jenks filed a notice of appeal of the decision transferring the case to the
27 Southern District on March 15, 2011 to the Bankruptcy Appellate Panel (“BAP”). (AR, part.
28 2 at 113-16.) The BAP dismissed the appeal, noting that the order to transfer was

1 interlocutory. (AR, part 2 at 140-43.) On June 23, 2011, the San Diego bankruptcy court held
 2 a hearing on BP's motion for judgment on the pleadings, and United's motion to dismiss. Prior
 3 to the hearing, the bankruptcy judge issued a tentative ruling granting the motions. (AR, part
 4 1 at 168-170.) On June 13, 2011, the bankruptcy court entered its order. (AR, part 2 at 158-
 5 59.) The court concluded that it had subject matter jurisdiction to rule on the motions and
 6 granted both motions. (*Id.*)

7 **Standard of Review**

8 A district court reviews a bankruptcy judge's decision applying the same standard of
 9 review used by circuit courts reviewing district court decisions. See Ford v. Baroff (In re
 10 Baroff), 105 F.3d 439, 441 (9th Cir. 1997). The bankruptcy judge's findings of fact are
 11 reviewed for clear error and its conclusions of law are subject to de novo review. In re
 12 Schmitz, 270 F.3d 1254, 1256 (9th Cir. 2001). Mixed questions of law and fact arise when the
 13 historical facts are established, the rule of law is undisputed, and the issue is whether the facts
 14 satisfy the legal rule. In re Bammer, 131 F.3d 788, 792 (9th Cir. 1997). Issues of statutory
 15 interpretation are questions of law subject to de novo review. *Id.*

16 **Discussion**

17 Jenks' appeal challenges the bankruptcy court's March 9, 2009 order authorizing the
 18 sale of commercial real property. Jenks argues that the bankruptcy court did not have
 19 jurisdiction to issue the sale order, because the real property did not belong to the debtor at the
 20 time of the bankruptcy, and thus it was never property of the estate. (Doc. No. 11 at 15.)
 21 Jenks contends that because Friwat transferred legal title to the property to JF Oil on October
 22 12, 2007, JF Oil held legal title to the property on July 27, 2008, when Friwat filed his chapter
 23 7 bankruptcy. (*Id.*)

24 Bankruptcy courts have subject matter jurisdiction to determine what is property of the
 25 estate. 11 U.S.C. § 105(a). The property of the estate includes all legal and equitable interests
 26 of the debtor in property as of the commencement of the case. Smith v. Arthur Andersen LLP,
 27 421 F.3d 989, 1002 (9th Cir. 2005), citing 11 U.S.C. § 541(a)(1) and United States v. Whiting
 28 Pools, Inc., 462 US 198, 205 n.9 (1983). A party wishing to challenge a bankruptcy court's

1 order authorizing sale of estate property to a good faith purchaser must obtain a stay pending
 2 appeal, or the appeal becomes moot once the sale is completed. 11 U.S.C. § 363(m). Failure
 3 to seek a stay bars an appeal from the sale. In re Combined Metals Reduction Co., 557 F.2d
 4 179, 187-90 (9th Cir. 1977).

5 Here, the debtor, Josef Friwat, was the sole owner of JF Oil, and the grant deed
 6 indicated that Friwat and JF Oil were comprised of the same party and continued to hold the
 7 same interest notwithstanding the transfer. (AR, part 1 at 20, Grant Deed.) The bankruptcy
 8 court determined that the debtor retained equitable title to the property even after he transferred
 9 the legal title to the property to JF Oil Company. (See Judge Taylor's Tentative Ruling on
 10 BP's motion for judgment on the pleadings, AR, part 1 at 168-170.) The bankruptcy court
 11 took judicial notice of the following facts:

- 12 (1) Friwat listed the property on his Schedule A and in his statement of intention indicated
 13 an initial desire to pay two creditors holding consensual liens secured by the property;
- 14 (2) Jenk's predecessor in interest, Fielding, requested avoidance of any pre-petition transfer
 15 of the property, and Friwat through acquiescence in the schedules, statement on the
 16 record, and action acknowledged that the Friwat retained equitable title to the property
 17 notwithstanding Friwat's pre-petition transfer to his wholly owned corporation;
- 18 (3) Fielding was actively involved in the sale approval process, withdrew any opposition
 19 to the sale, never raised the ownership issue as a bar to sale, and received proceeds from
 20 the sale; and
- 21 (4) Fielding neither filed an appeal nor requested a stay in connection with the order
 22 approving the sale.¹

23 (See id.)

24 On appeal, the Court concludes that the bankruptcy judge's findings of fact are not
 25 clearly erroneous. In re Schmitz, 270 F.3d 1254, 1256 (9th Cir. 2001). The Court applies a
 26 de novo standard of review to the bankruptcy judge's conclusions of law. Id. After

27
 28 ¹ The bankruptcy judge also noted that Jenks' current attorney also acted as
 non-bankruptcy counsel for Fielding.

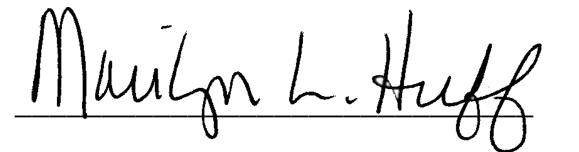
1 considering the record on appeal and the parties' arguments, the Court concludes that the
2 bankruptcy court had subject matter jurisdiction to issue its June 16, 2009 order authorizing
3 a sale of the Long Beach property. Accordingly, the Court AFFIRMS the order of the
4 bankruptcy judge granting United and BP's motions and dismissing the complaint with
5 prejudice.

6 **Conclusion**

7 For the reasons above, the Court AFFIRMS the order of the bankruptcy judge granting
8 defendant BP West Coast Products LLC's motion for judgment on the pleadings, granting
9 defendant United Family LLC's motion to dismiss the complaint, and dismissing plaintiff's
10 complaint with prejudice as to all defendants.

11 **IT IS SO ORDERED.**

12 DATED: November 1, 2011


13 MARILYN L. HUFF, District Judge
14 UNITED STATES DISTRICT COURT

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